TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A FIRST AMENDED AND RESTATED ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT BETWEEN THE TOWN OF ADDISON, BELTLINE BELTWAY INVESTMENTS, LTD. AND URBAN INTOWNHOMES, LLC FOR A MIXED USE DEVELOPMENT, TO BE KNOWN AS ADDISON GROVE, LOCATED AT 4150 BELT LINE ROAD, AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT, AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

Section 1. The First Amended and Restated Economic Development Program Grant Agreement between the Town of Addison, Beltline Beltway Investments, Ltd. and Urban Intownhomes, LLC for a mixed use development, to be known as Addison Grove, located at 4150 Belt Line Road, a copy of which is attached to this Resolution as **Exhibit A,** is hereby approved. The City Manager is hereby authorized to execute the agreement.

Section 2. This Resolution shall take effect from and after its date of adoption.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this the 13th day of September, 2016.

_____
Todd Meier, Mayor

ATTEST:

By: _____
Laura Bell, City Secretary

APPROVED AS TO FORM:

By: _____
Brenda N. McDonald, City Attorney

FIRST AMENDED AND RESTATED
ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT

This Economic Development Program Grant Agreement ("Agreement") is made and entered into by and between Beltline Beltway Investments, Ltd., a Texas limited partnership company and Urban Intownhomes, LLC, a Texas limited liability company (jointly, "Fenway" or "Company"), and the Town of Addison, Texas, a Texas home rule municipality ("Addison" or the "City"), for the purposes and consideration stated below (Fenway and the City are sometimes referred to herein together as the "Parties" and individually as a "Party").

WHEREAS, Fenway has purchased the 17.0689 acre parcel of land located at 4150 Belt Line Road to redevelop the vacant Sam's Club property into a mixed use development, to be known as Addison Grove, consisting of approximately 20,000 square feet of retail space, 17 live/work units, 161 townhomes and not more than 330 multi-family units surrounding a parking garage, all in accordance with Ordinance No. O16-003, as amended (the "Project"); and

WHEREAS, the total Project cost is estimated to be in excess of $86,000,000.00 and the total estimated ad valorem tax value is estimated to be in excess of $121,000,000.00; and

WHEREAS, Fenway's redevelopment of the Sam's Club property will include the construction of public infrastructure including roads, water lines, sewer lines, and pedestrian and park amenities to be used and enjoyed by the public; and

WHEREAS, the Project is an important component of the Town's desire to stimulate the economic development of retail properties on Belt Line Road, west of Midway Road;

WHEREAS, the City is authorized by Section 380.001, Tex. Loc. Gov. Code, to establish and provide for the administration of programs for making loans and grants of public money to promote state or local economic development and to stimulate business and commercial activity in the City, and this Agreement constitutes such a program for promoting and retaining economic development within the City; and

WHEREAS, the City has determined that making an economic development grant to Fenway in accordance with this Agreement will further the objectives of the City, will benefit the City and the City's inhabitants, and will promote local economic development and stimulate business and commercial activity within the City; and

WHEREAS, such economic development grant is being paid to Developer for reimbursement of development costs as part of the City's economic development programs.

NOW, THEREFORE, for and in consideration of the foregoing, and on the terms and conditions hereinafter set forth, the City and Fenway do hereby agree as follows:

Section 1. Findings. The recitals set forth above are true and correct and are incorporated as if fully set forth herein.

Section 2. Term.

This Agreement shall be effective as of the last date of execution hereof (the "Effective Date") and unless otherwise terminated in accordance with the provisions of this Agreement, shall end on the date on which the obligations of the parties under this Agreement shall have been completed (the "Term").

Section 3. Program Grant.

Subject to Fenway' s satisfaction of and compliance with all of the terms and conditions of this Agreement including without limitation the requirements set forth in Section 4 below, the City agrees, to pay to Fenway a Program Grant in the maximum amount of six million, five hundred thousand and dollars ($6,500,000.00) (the "Program Grant") to reimburse Fenway for construction of the public infrastructure for the Project defined as potable water main lines, sanitary sewer main lines, stormwater main lines, public streets, public sidewalks, public parks, and all associated appurtenances, all as identified in **Exhibit A** attached hereto and incorporated herein (the "Public Infrastructure") and provide certain fee waivers, as follows:

(a) A maximum of $4,250,000.00 will be given to reimburse Fenway for the construction of Public Infrastructure items identified in Exhibit A as to be funded from the City's General Fund; and

(b) A maximum of $1,000,000.00 will be given to reimburse Fenway for the construction of Public Infrastructure identified in Exhibit A as qualifying for funding from the City's Stormwater Fund; and

(c) A maximum of $1,000,000.00 will be given to reimburse Fenway for the construction of Public Infrastructure identified in Exhibit A as qualifying for funding from the City's Utility Fund and; and

(d) A maximum of $250,000.00 will be given in the nature of permit and development fee waivers.

It is understood and agreed by the Parties that the line item cost amounts shown in Exhibit A are estimates only and the actual line item amounts may be adjusted up or down within each funding category of Public Infrastructure improvements. However, the maximum Grant payment for each funding category of Public Infrastructure, as listed above, and funds not spent in any funding category are NOT transferrable to reimburse Fenway for expenses in another funding category.

The Grant payments made hereunder shall be paid solely from lawfully available funds that have been appropriated by the City. Under no circumstances shall the City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Consequently, notwithstanding any other provision of this Agreement, the City shall

have no obligation or liability to pay any Grant unless the City appropriates funds to make such payment during the budget year in which the Grant is payable; provided that during the Term of this Agreement the City agrees that it will take such steps as are within its power to appropriate funds each year estimated to equal the amount of Grants to be paid the Company for the ensuing fiscal year. Further, the City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the Company. Notwithstanding the foregoing, the Company may pledge or contribute the City's payments, dependent on Company's full compliance with the terms of this Agreement, to assist in securing financing for the Project; but the City will not consent to a requirement to make payments directly to a lender.

Section 4. Conditions to Grant Payments.

(a) Fenway has offered to permanently and irrevocably deed restrict the multi-family and parking garage portion of the Project as provided in Section 4(c) below (the "Deed Restriction"). The Deed Restriction shall provide that it may only be removed with the City's consent exercised in its sole discretion. Prior to, and as a condition of the First Grant Payment, Fenway shall submit to the City, a copy of the Deed Restriction showing a file stamp evidencing filing for record of the document in the Official Public Records of real property of Dallas County, Texas. Fenway's obligations with respect to the requirements of this subsection 4(a) and subsection 4(c) shall be discharged when the Deed Restriction required herein has been filed for record in the Official Public Records of real property of Dallas County, Texas.

(b) The City's obligation to make the Grant payments shall be conditioned upon Fenway's compliance with and satisfaction of all of the terms and conditions of this Agreement, including without limitation, each of the conditions set forth below:

(i) First Grant Payment: The First Grant Payment of one-third (1/3) of the potential Grant payment, or a maximum of two million, eighty-three thousand, three hundred thirty-three dollars, and thirty-three cents ($2,083,333.33) shall be paid upon the submission of a request for payment with proper documentation of actual expenditures in a form approved by the City in its reasonable discretion and the completion of construction and acceptance by the City of all of the Public Infrastructure. Notwithstanding the foregoing requirement for completion of all of the Public Infrastructure, Fenway may request the First Grant Payment when all of the Public Infrastructure has been accepted by the City with the exception of the following pedestrian amenities as set forth in Exhibit A: pedestrian lighting, concrete sidewalks, trash cans or benches. The City will withhold that portion of the First Grant Payment associated with the incomplete pedestrian amenities until such time as the pedestrian amenities have been completed. Fenway may request release of the withheld funds in amounts not less than two hundred fifty thousand dollars ($250,000.00).

(ii) Second Grant Payment: The Second Grant Payment of one-third (1/3) of the potential Grant payment, or a maximum of two million, eighty-three thousand, three hundred thirty-three dollars, and thirty-three cents ($2,083,333.33) shall be paid after the First Grant Payment and upon the submission of a request for payment with proper documentation of

actual expenditures in a form approved by the City in its reasonable discretion and the completion of 40 percent of the total number of townhomes plus live/work units as shown on the approved development plans for the Project. Such completion shall be evidenced by submission of the final inspection report for each unit.

(iii) Third Grant Payment: The Third Grant Payment of one-third (1/3) of the potential Grant payment, or a maximum of two million, eighty-three thousand, three hundred thirty-three dollars, and thirty-four cents ($2,083,333.34) shall be paid upon the submission of a request for payment with proper documentation of actual expenditures in a form approved by the City in its reasonable discretion and the completion of 75 percent of the total number of townhomes plus live/work units as shown on the approved development plans for the Project. Such completion shall be evidenced by submission of the final inspection report for each unit.

(c) Fenway shall develop the multi-family and garage portion of the Project with an initial apartment developer and operator approved by the City, exercised in its reasonable discretion. The City hereby approves Fenway or an entity controlled by Frank Liu as the initial apartment developer and AMLI Residential Partners, LLC as the initial apartment operator. Fenway shall place a deed restriction on the multi-family portion of the Project requiring that, if at any time after the initial development of the apartments and for a period of 20 years after the date the deed restriction is recorded, the Operator of the apartments is not the Owner of the multi-family portion of the Project, an Affiliate of AMLI Residential Partners, LLC, or an Affiliate of the then-current Owner, the Operator must be a "Qualified Operator", which shall be defined as an Operator who satisfies the following requirements: (A) the Operator manages a minimum of 20 multi-family projects and 2,000 multi-family units, a majority of which are deemed to be luxury properties and units operated in a first-class manner in their market; (B) the Operator is a member in good standing of a nationally-recognized apartments association or the Texas Apartment Association (TAA); and (C) the Operator (or its employee designated as primary manager for the apartments) is either a Certified Apartment Manager, National Apartment Leasing Professional, Certified Apartment Portfolio Supervisor, accredited Residential Manager or has at least 5 years' experience as a community manager with an operator that satisfies (A) and (B) of this subsection (c). The deed restriction shall provide that an Owner shall be deemed to be in compliance with the Deed Restriction for so long as the multi-family portion of the Project is consistently maintained in a first-class manner consistent with other luxury multi-family properties in the Addison-North Dallas, Texas submarket. For purposes of this paragraph, an "Operator" is the person or entity charged with day-to-day management, leasing, operation and maintenance of the multi-family portion of the Project; the "Owner" is the then-current owner of fee-simple title to the multi-family portion of the Project; and an "Affiliate" is an entity that directly or indirectly owns an interest in or controls, or is owned or controlled by, or is under common ownership or control with, AMLI Residential Partners, LLC or the applicable Owner. In the event of a dispute regarding whether the multi-family portion of the Project is consistently maintained in a first-class manner, the City will provide the Owner written notice of a dispute and such dispute shall be resolved by the following arbitration process. No later than thirty (30) days following the Owner's receipt of such notice, the City

and Owner shall each appoint one arbitrator who shall, by profession, be a real estate appraiser (with the professional designation of M.A.I. or, if M.A.I. ceases to exist, a comparable designation from an equivalent professional appraisal organization) who shall have been active over the ten (10) year period ending on the date of such appointment in appraisal of similar multi-family properties in the in the Addison-North Dallas, Texas submarket, who shall not have previously been employed by either the City or Owner. The determination of the arbitrators shall be limited solely to the issue of whether the multi-family portion of the Project is consistently maintained in a first-class manner. The two arbitrators so appointed shall, within ten (10) days of the date of the appointment of the last appointed arbitrator, agree upon and appoint a third arbitrator who shall be qualified under the same criteria set forth hereinabove for qualification of the initial two arbitrators. The three arbitrators shall, within thirty (30) days of the appointment of the third arbitrator, reach a decision as to whether the multi-family portion of the Project is consistently maintained in a first-class manner, and shall notify the City and Owner thereof in writing. The decision of the majority of the three arbitrators shall be binding upon the City and Owner and judgment upon such decision may be entered in by any court having jurisdiction over the City and Owner. If the two arbitrators fail to agree upon and appoint a third arbitrator, both arbitrators shall be dismissed and the City and Owner each shall promptly select and appoint one new arbitrator each possessing the qualifications described above therefor. Such new arbitrators shall promptly follow the procedure set forth above. The cost of arbitration shall be paid by the City if the arbitrators determine the multi-family portion of the Project is consistently maintained in a first-class manner and by Owner if the arbitrators determine the multi-family portion of the Project is not consistently maintained in a first-class manner. The deed restriction shall provide Owner with at least one hundred twenty (120) days' notice and cure period. The deed restriction shall require every Operator to perform a criminal background check, income verification and credit check on each prospective tenant prior to execution of a residential apartment lease. The deed restriction described herein shall give the City the ability to enforce the restriction.

(d) Fenway shall expend a minimum of $1,000,000.00 for public park improvements to be reimbursed from the $4,250,000.00 General Fund category. Such improvements and the expenditure therefore, are subject to reasonable approved by the City.

Notwithstanding anything contained herein to the contrary or any other provision of this Agreement, the Program Grant payment (and/or any portion thereof) shall not be due and payable, and this Agreement may be terminated by the City (that is, without any opportunity for cure by Fenway), if Fenway fails to timely comply with and satisfy to the City's satisfaction any of the conditions to the Program Grant payments (and/or any portion thereof) as set forth in this Section 4, above and if Fenway fails to develop the Property in accordance with Ordinance No. O16-003, as amended. In addition, should Fenway (i) choose an apartment developer or initial operator for the Project that is not approved by the City as required in Section 4(c) above, or (ii) fail to record the Deed Restriction; then Fenway will forfeit the right to receive any Grant payments under this Agreement and in addition to other remedies set forth in this Agreement, shall immediately return any Grant payments previously received under this

Agreement and shall reimburse the City for all permit and development fee waivers that it has received.

Further, notwithstanding any other provision of this Agreement, if Fenway fails to submit its request for a Grant Payment within six (6) months of the date the right to receive the payment accrues and after thirty (30) days' written notice from the City pursuant to Section 12, then Fenway shall not receive the Grant Payment and the City shall have no obligation to make such payment to Fenway and Fenway will have forfeited the right to receive such payment.

Section 5. Additional Economic Incentives.

In addition to the Grant payments described above, as a part of the incentive and to assist Fenway in its effort to develop the Project, the City will support the process to acquire the right-of-way for Runyon Road, including initiating discussions with the property owners, preparing appraisals and exercising all powers available to it in accordance with Texas law. Fenway shall be responsible for all acquisition costs and shall reimburse the City for all costs of acquisition within 30 days of receipt of a request for reimbursement accompanied by documentation evidencing the expense.

Section 6. Default.

(a) **Event of Default by the Company.** If, during the Term of this Agreement, the Company breaches any of the terms or conditions of this Agreement or fails to maintain any conditions of the Grant payments, then the Company shall be in default ("Event of Default"). In the event the Company defaults in its performance, then the City shall give the Company written notice of such default, and if the Company has not cured any default within thirty (30) days of such written notice, this Agreement may be terminated by the City. In the event of default by the Company and the continuation of such default for thirty (30) days after the written notice set forth above, the City shall have the following remedies, in addition to all other rights and remedies available at law or in equity:

(i) to nullify Section 3 of this Agreement and immediately seek reimbursement of any and all Grant Payments received by the Company; and/or

(ii) to seek specific enforcement of this Agreement.

(b) **Event of Default by the City**. Upon the occurrence of default by the City, the Company shall give written notice of such default, and if City has not cured the default within thirty (30) days within said written notice, this Agreement may be terminated by the Company. The Company shall have the right to seek specific performance of the City's obligation to make the Grant Payments set forth in Section 4(b) hereof, as its sole and exclusive remedy.

Section 7. Termination; Reimbursement.

This Agreement shall terminate without notice or demand upon the occurrence of any one of the following:

(a) the execution by both Parties of a written agreement terminating this Agreement; or

(b) as otherwise provided for in this Agreement, including as set forth in Section 3, above; or

(c) the expiration of the Term; or

(d) at the option of either party (the "non-breaching party") in the event the other party (the "breaching party") breaches or fails to comply with any term, condition, or provision of this Agreement and such breach or failure is not cured or remedied to the satisfaction of the non-breaching party within thirty (30) days after written notice thereof from the non-breaching party to the breaching party;

(e) if Fenway suffers an Event of Bankruptcy or Insolvency, as hereinafter defined, that impairs its ability to perform its obligations under this Agreement; or

(f) at the City's option, if any taxes or fees owed by Fenway to the City or the State of Texas shall become delinquent (provided, however, that Fenway retains the right to timely and properly protest and contest any such taxes or fees, and the City's right to terminate this Agreement shall be suspended during such protest and contest period) after thirty (30) days' written notice from the City pursuant to Section 12, of such delinquency.

If this Agreement is terminated pursuant to subsection (d), subsection (e), or subsection (f) of this Section, Fenway shall promptly (but in any event within thirty (30) days of the date of termination) reimburse and repay to the City a sum equal amount of Grant payment made by the City up to the date of termination. All repayment and/or reimbursement amounts under this Agreement shall bear and include interest at the rate of 4% per year, compounded, from the date that the payment was initially made to Fenway.

For purposes of this Section, "Event of Bankruptcy or Insolvency" means (i) the liquidation, dissolution, or termination of Fenway as a going business, (ii) insolvency or a declaration of insolvency of Fenway under any law, (iii) appointment of a receiver for Fenway, (iv) any assignment or conveyance of all or a substantial portion of assets for the benefit of creditors, (v) a transfer in fraud of creditors according to any applicable law, or (vi) the filing of a petition by Fenway for relief, or the filing of a petition against Fenway for involuntary bankruptcy, under the United States Bankruptcy Code or any other present or future federal or state insolvency, bankruptcy, or similar laws.

Section 8. Representations by the City.

The City represents that it is a home rule Texas municipal corporation and to the best of its actual knowledge has the power to enter into this Agreement and to carry out its obligations hereunder. However, notwithstanding any other provision of this Agreement, it is understood and expressly agreed by Fenway that the City does not warrant or guarantee that the Program Grant payment (and any part thereof) as described herein will be upheld as valid, lawful, enforceable or constitutional in the event the statutory or other authority for the same or the City's use thereof is challenged by court action or other action or proceeding (including any action or proceeding involving the Texas Attorney General). In the event such court or other action or proceeding related to the legality of this Agreement and the providing of the Program Grant (or any part thereof) is instituted, the Parties shall defend or respond to such action or proceeding at their respective expense. Should such litigation, action or other proceeding result in a determination that this Agreement or the payment of the Program Grant (or any part thereof) was or is prohibited under federal, state or local law (including any constitutional or charter provision), rule or regulation, and so result in the loss of the Program Grant as provided herein, Fenway shall have no recourse against the City or any of its officials, officers, employees, agents, or volunteers, past or present, and Fenway shall promptly repay to the City the Program Grant payment previously made to Fenway by the City.

Section 9. Representations and Warranties by Fenway.

Fenway represents and warrants that:

(a) Fenway is a Texas corporation, has the legal capacity and the authority to enter into and perform its obligations under this Agreement, and the same shall be true and accurate at all times in connection with this Agreement;

(b) The execution and delivery of this Agreement and the performance and observance of its terms, conditions and obligations have been duly and validly authorized by all necessary action on its part to make this Agreement, and this Agreement is not in contravention of Fenway's Articles of Incorporation or regulations, or any agreement or instrument to which Fenway is a party or by which it may be bound as of the date hereof;

(c) Fenway has the necessary legal ability to perform its obligations under this Agreement;

(d) No litigation or governmental proceeding is pending, or, to the knowledge of any of Fenway's officers, threatened against or affecting Fenway, which may result in a material adverse change in Fenway's business, properties or operations sufficient to jeopardize Fenway as a going concern; and

(e) This Agreement constitutes a valid and binding obligation of Fenway, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws

of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

Section 10. Entire Agreement; Changes and Amendments.

This Agreement represents the entire and integrated agreement between the City and Fenway with regard to the matters set forth herein and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Agreement may be amended only by written instrument signed by authorized representatives of each of the City and Fenway.

Section 11. Successors and Assigns; No Third Party Beneficiaries.

Upon the prior written approval of the City, exercised in its reasonable discretion, Fenway may assign, sell, pledge, transfer, encumber or otherwise convey (any of the foregoing, and the occurrence of any of the foregoing, a "Conveyance") its rights and obligations hereunder that does not result in a change in majority ownership or control. Any Conveyance of any kind or by any method (including by operation of law, by merger, or otherwise) without the City's prior written consent shall be null and void.

Any Conveyance approved by the City shall be expressly subject to all of the terms, conditions and provisions of this Agreement. In the event of any such Conveyance approved by the City, Fenway shall obtain a written agreement (the "Assumption Agreement") from each such assignee, transferee, buyer, pledgee, or other person or entity to whom this Agreement is otherwise conveyed whereby each such assignee, transferee, buyer, pledgee, or other person or entity to whom this Agreement is otherwise conveyed agrees to be bound by the terms and provisions of this Agreement.

This Agreement shall be binding on and inure to the benefit of the Parties, their respective permitted successors and permitted assigns. This Agreement and all of its provisions are solely for the benefit of the Parties hereto and do not and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

Section 12. Notice.

Any notice, statement and/or report required or permitted to be given or delivered shall be in writing and shall be deemed to have been properly given for all purposes (i) if sent by a nationally recognized overnight carrier for next business day delivery, on the first business day following deposit of such notice with such carrier unless such carrier confirms such notice was not delivered, then on the day such carrier actually delivers such notice, or (ii) if personally delivered, on the actual date of delivery, or (iii) if sent by certified U.S. Mail, return receipt requested postage prepaid, on the third business day following the date of mailing. Addresses for any such notice, statement and/or report hereunder are as follows:

To the City:	To Fenway:
Town of Addison, Texas 5300 Belt Line Road Dallas, Texas 75254 Attention: City Manager	Beltline Beltway Investments, Ltd. Urban Intownhomes, LLC 1520 Oliver St. Houston, Texas 77007 Attn: Frank Liu

Section 13. Applicable Law; Venue.

This Agreement is subject to the provisions of the Charter and ordinances of the City, as amended or modified. This Agreement shall be construed under, governed by and is subject to the laws (including the constitution) of the State of Texas, without regard to choice of law rules, and all obligations of Fenway and the City created by this Agreement are performable in Dallas County, Texas. Venue for any suit, action or proceeding under this Agreement shall lie exclusively in Dallas County, Texas. Each party hereby submits to the exclusive jurisdiction of the courts in Dallas County, Texas for purposes of any such suit, action, or proceeding hereunder. Each party waives any claim that any such suit, action, or legal proceeding has been brought in an inconvenient forum or that the venue of that proceeding is improper.

Section 14. Legal Construction/Partial Invalidity of Agreement.

The terms, conditions and provisions of this Agreement are severable, and in case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

Section 15. Miscellaneous.

(a) Pursuant to Texas Government Code, Chapter 2264 (entitled "Restrictions on Use of Certain Public Subsidies"), Fenway certifies that neither Fenway, nor any branch, division, or department of Fenway, knowingly employs, or will employ, an undocumented worker (as the term "undocumented worker" is defined in Section 2264.001 of the said Chapter 2264, Tex. Gov. Code) in connection with the Leased Premises, the Services provided by Fenway at the Leased Premises, or this Agreement. Fenway agrees that if, during the term of this Agreement and after it receives any payment or funds from the City pursuant to this Agreement, Fenway, or a branch, division, or department of Fenway, is convicted of a violation under 8 U.S.C. Section 1324a(f), Fenway shall repay the amount of all Grant funds paid by the City to Fenway with interest, at the rate of 4% per year, compounded, from the date that the payment was initially made to Fenway, not later than the 120th day after the date the City notifies Fenway of the violation.

(b) Notwithstanding any other provision of this Agreement, except as expressly provided in Section 6(b) above, nothing in this Agreement shall or may be deemed to be, or shall or may be construed to be, a waiver or relinquishment of any immunity, defense, or tort limitation to which the City, its officials, officers, employees, representatives, and agents are or may be entitled, including, without limitation, any waiver of immunity to suit.

(c) Except as set forth in or otherwise limited by this Agreement, the remedies and rights set forth in this Agreement: (a) are and shall be in addition to any and all other remedies and rights either party may have at law, in equity, or otherwise, (b) shall be cumulative, and (c) may be pursued successively or concurrently as either party may elect. The exercise of any remedy or right by either party shall not be deemed an election of remedies or rights or preclude that party from exercising any other remedies or rights in the future. All waivers must be in writing and signed by the waiving party, and the City's waiver of any right, or of Fenway's breach, on one or more occasions will not be deemed a waiver on any other occasion. The City's failure to enforce or pursue any of its rights under or any provision of this Agreement shall not be or constitute a waiver of its rights or provision and shall not prevent the City from enforcing or pursuing that right or provision or any other right under or provision of this Agreement in the future. No custom or practice arising during the administration of this Agreement will waive, or diminish, the City's rights hereunder or to diminish the City's right to insist upon strict compliance by Fenway with this Agreement.

(d) The Parties acknowledge that each of them has been actively involved in negotiating this Agreement and has been represented by competent legal counsel. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting Party will not apply to interpreting this Agreement. In the event of any dispute over the meaning or application of any provision of this Agreement, the provision will be interpreted fairly and reasonably and neither more strongly for nor against any Party, regardless of which Party originally drafted the provision.

(e) This Agreement is not confidential information and may be disclosed to the public.

(f) Any of the representations, covenants, and obligations of the Parties hereto, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination or expiration of this Agreement shall survive termination or expiration.

(g) It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership, joint venture, joint enterprise, or other relationship between or among the Parties.

(h) The undersigned officers and/or agents of the Parties hereto are the properly authorized persons and have the necessary authority to execute this Agreement on behalf of the Parties hereto.

(i) The City agrees that with respect to this Agreement, no liability shall arise in favor of the City against any officer, director, member, agent or employee of Fenway, but the City shall look solely to the assets of Fenway for satisfaction of Fenway's duties, obligations and liabilities arising under or in connection with the Agreement.

(SIGNATURES ON NEXT PAGES)

EXECUTED this ____ day of _____, 2016.

TOWN OF ADDISON

_____
Wesley S. Pierson, City Manager

ATTEST:

_____
Laura Bell, City Secretary

APPROVED AS TO FORM:

_____
Brenda N. McDonald, City Attorney

STATE OF TEXAS §
§
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of 2016, by Wesley S. Pierson, City Manager of the Town of Addison, Texas, on behalf of the town.

_____
Notary Public, State of Texas

[SEAL]

EXECUTED this ____ day of _____, 2016.

BELTLINE BELTWAY INVESTMENTS, LTD.,
a Texas limited partnership

By: Country Lane GP, LLC,
a Texas limited liability company,
its general partner

By:_____
Name:_____
Title:_____

STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on the _____ day of 2016, by _____, _____ of Country Lane GP, LLC, a Texas limited liability company, general partner of Beltline Beltway Investments, Ltd., a Texas limited partnership, on behalf of such limited partnership.

_____
Notary Public, State of Texas

[SEAL]

EXECUTED this ____ day of _____, 2016.

URBAN INTOWNHOMES, LLC,
a Texas limited liability company

By:_____
Name:_____
Title:_____

STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on the _____ day of 2016, by _____, _____ of Urban Intownhomes, LLC, a Texas limited liability company, on behalf of such limited liability company.

_____
Notary Public, State of Texas

[SEAL]

EXHIBIT A

ADDISON GROVE APPROVED INFRASTRUCTURE COSTS

Addison Grove Infrastructure		Infrastructure Costs		
	Unit	Quantity	Unit Cost	Ext. Cost
GENERAL FUND - Capped at $4,250,000				
ROADWAY PAVEMENT - General Fund				
Public Roadway	SY	10,150	$ 125.00	$ 1,268,750
			Subtotal	$ 1,268,750
PEDESTRIAN AMENITIES - General Fund				
Tree Relocation from Private Land to Public Areas	LS	1	$ 100,000.00	$ 100,000
Park Improvements	LS	1	$ 1,000,000.00	$ 1,000,000
Pedestrian Lighting	EA	79	$ 2,500.00	$ 197,500
Concrete Sidewalks	SF	82,500	$ 4.75	$ 391,875
Trash Cans	EA	24	$ 500.00	$ 12,000
Benches	EA	36	$ 1,200.00	$ 43,200
			Subtotal	$ 1,744,575
RUNYON ROAD PAVEMENT - General Fund				
Remove and Replace Runyon Road Pavement	SY	2,000	$ 125.00	$ 250,000
			Subtotal	$ 250,000
STORMWATER FUND - Capped at $1,000,000				
STORM DRAINAGE - Stormwater Fund				
Storm Drain Manhole	EA	8	$ 6,500.00	$ 52,000
Storm Drain Inlets	EA	20	$ 5,000.00	$ 100,000
18" RCP	LF	900	$ 100.00	$ 90,000
24" RCP	LF	1,750	$ 115.00	$ 201,250
42" RCP	LF	450	$ 200.00	$ 90,000
60" RCP Detention Pipe	LF	1,500	$ 325.00	$ 487,500
			Subtotal	$ 1,020,750
UTILITY FUND - Capped at $1,000,000				
WATER - Utility Fund				
8" Water Line and Typical Fittings	LF	4,200	$ 80.00	$ 336,000
Fire Hydrants	EA	17	$ 3,500.00	$ 59,500
			Subtotal	$ 395,500
SANITARY SEWER - Utility Fund				
8" Sanitary Sewer	LF	4,500	$ 65.00	$ 292,500
10" Offsite Sanitary Sewer Improvements	LF	1,530	$ 120.00	$ 183,600
Sanitary Sewer Manholes	EA	16	$ 6,000.00	$ 96,000
			Subtotal	$ 572,100
ROADWAY PAVEMENT - General Fund				$ 1,268,750
PEDESTRIAN AMENITIES - General Fund				$ 1,744,575
RUNYON ROAD PAVEMENT - General Fund				$ 250,000
STORM DRAINAGE - Stormwater Fund				$ 1,020,750
WATER - Utility Fund				$ 395,500
SANITARY SEWER - Utility Fund				$ 572,100
CONTINGENCY				$ 1,010,351
			GRAND TOTAL	$ 6,262,026